

1 Q We can also -- And people who surrendered in 1992, if
2 they hadn't put in any additional premiums after
3 1985, would have been 2 percent better off in the
4 actual world than in the "but-for" world; correct?
5 A That's quite a mouthful. To the extent that they
6 never made another deposit and to the extent that
7 they terminated at that point, the financial
8 implication would be 2 percent. I have talked about
9 harm to those individuals which exists irrespective
10 of the 2 percent, but 2 percent in my opinion does
11 not nearly make up for the harm done to them.
12 Q But from -- Well, have you quantified the harm that
13 was done to them that was other than financial, sir?
14 A No, that's not a quantifiable value for an actuary to
15 do.
16 Q Was that something that you were asked to perform as
17 part of your analysis in coming to your opinions in
18 the March 4th, 2013 report?
19 A I was neither asked to do that nor did I do it.
20 Q And that would not be something that you would feel
21 you had expertise to quantify; correct?
22 A I would not attempt to quantify that number, no.
23 Q But let's go back to this chart then. Assuming that
24 the people who surrendered in 1992, which were 1,255
25 of them, had not made any premium payments after

1 1985, those 1,255 people from a financial perspective
2 would have been 2 percent better off in the actual
3 world than in the "but-for" world?
4 A No, because that's not a viable assumption. That's
5 not at all the real world.
6 Q But for those individuals in that 1,255 individual
7 group who did not put in any additional premiums
8 after 1985 --
9 A For that smaller subgroup.
10 Q -- those individuals would be 2 percent better off
11 financially in the "but-for" world -- in the actual
12 world than in the "but-for" world?
13 A For that subgroup, that is correct.
14 Q And we can also see how many people surrendered or
15 terminated in 1991, can't we?
16 A Yes, sir, we can.
17 Q You take 24,094 and you subtract 22,675; is that
18 correct?
19 A That is correct.
20 Q And you will then get 1,419 individuals who
21 surrendered in 1991?
22 A That is correct.
23 Q To the extent that there is some group of those
24 individuals who did not invest any additional
25 premiums after 1985, those individuals would be 1

1 percent better off financially in the actual world
2 than in the "but-for" world?
3 A That is correct.
4 Q Now, you've mentioned that you thought that those
5 people were nevertheless harmed, correct, by the 1985
6 change?
7 A I'm sorry, could you read that question back?
8 Q I will ask it again.
9 A Good.
10 Q You have said that even though those people that we
11 have talked about may be financially better off, they
12 were still nevertheless harmed by the 1985 change?
13 A That is correct.
14 Q Did you do anything to quantify the harm -- Strike
15 that.
16 Did you do anything to quantify on a
17 class-wide basis the damages that those individuals
18 suffered other than the financial accumulated
19 difference?
20 A I think that's about three questions ago that you
21 asked me that and I said I didn't do it then, I
22 haven't done it since. So, no, I did not do that.
23 Q Do you have any idea how somebody would do that?
24 A I have been involved in sufficient litigation that
25 courts do that all the time.

1 Q But do you yourself sitting here today have any idea
2 how you would actually quantify that?
3 A No, because I don't do that. I don't do that
4 calculation.
5 Q Do you know how that would be done on a class-wide
6 basis?
7 A I don't do that. I do not have the expertise to do
8 that, I have never done that, and so it's -- I don't
9 care about that. I don't -- I have no involvement
10 with that.
11 Q To your knowledge, would the harm that a particular
12 individual suffered as a result of simply
13 Northwestern Mutual making the 1985 change depend on
14 the particular individual and their circumstances
15 themselves?
16 A No.
17 Q You think it would be the same harm for everybody in
18 the class regardless?
19 A That aspect of harm, yes.
20 Q But you have done nothing to quantify it?
21 A I said over and over, I don't do that.
22 Q And why is it you think that every class member would
23 have suffered precisely the same harm --
24 non-financial harm from the 1985 change?
25 A Because the nature of the violation that's been done

1 to them is precisely the same.

2 Q Do you think that there are some individuals who

3 might have preferred to have been in a segmented

4 account back in 1985?

5 A No one would prefer that their insurance company

6 change the nature of their agreement in a unilateral

7 way which is not absolutely going to provide

8 additional benefits or a better situation for them.

9 No one would think that that is an acceptable

10 behavior.

11 Q Are there, however, policyholders that would have

12 preferred to be in a segmented account back in 1985?

13 A And I have said many times today, I have no opinion

14 as to what an individual policyholder might be

15 thinking. I have no regard for that. It doesn't

16 bother -- it doesn't impact me in any way.

17 Q Do you know what any particular individual

18 policyholder's expectations were with regard to what

19 dividends would be in the future as of 1985 for the

20 Pre-MN annuity policy?

21 A I have no opinion in that area. I don't -- I don't

22 concern with individuals.

23 Q You are aware that Judge Flynn in the State Court

24 case had certified a statewide class?

25 A I have heard the name and I am not sure precisely

1 what was affirmed or not. I'm sure it's been stated

2 to me, but it doesn't impact my analysis.

3 Q Do you know how many members of the statewide class

4 actually opted out of that class?

5 A I have no idea.

6 Q Were you asked to take into consideration whether in

7 fact people had opted out of the statewide class?

8 A Not at all.

9 Q Have you ever interviewed or talking to anyone who

10 actually opted out of the statewide class to ask them

11 why they did so?

12 A No, I have not.

13 Q Are you familiar with the process in class actions

14 where after a class is certified notification is sent

15 out to members of the class?

16 A I'm aware that that is done.

17 Q Are you aware of how many putative class members in

18 the class certified by Judge Flynn, how many of their

19 notices were returned by the post office?

20 A I have no idea.

21 Q Have you done anything to investigate how one might

22 actually contact the putative class members?

23 A In this instance?

24 Q In this instance.

25 A No, I have not.

1 Q Have you done anything to try and determine how many

2 of the putative class members are no longer alive?

3 A No, I have not.

4 Q Have you done anything to determine how one might go

5 about contacting the estate of putative class

6 members?

7 A I have not been involved in that area.

8 Q Have you been asked to take into consideration or

9 make any assumptions by counsel regarding class

10 members who may no longer be living or who may not be

11 contactable?

12 A No, I have not.

13 Q You have no personal knowledge of why any particular

14 class member opted out of the statewide class?

15 A It's not part of my analysis. I have no opinion.

16 Q Do you recall having provided -- Well, let me ask you

17 this: How many members of the putative class

18 currently have in-force life insurance policies from

19 Northwestern Mutual?

20 A I have no idea.

21 Q Have you ever looked at that question?

22 A I don't recall ever looking at that.

23 Q It is true that whatever money is paid out to Pre-MN

24 annuitants as a result of this lawsuit would come out

25 of the divisible surplus of the company?

1 A Absolutely not.

2 Q Where would it come from?

3 A It would come from the surplus of the company.

4 Q And how is that different than the divisible surplus

5 of the company?

6 A Divisible surplus is determined each year as that

7 amount which will be used for dividends, so it's not

8 going to be a dividend. This is a different thing

9 than a dividend.

10 Q Would the amount of divisible surplus that was

11 determined at the end of the year depend on what

12 money was paid out of the surplus already during that

13 year?

14 A No, it would not to this extent.

15 Q If there were a -- let's just speak hypothetically.

16 If a mutual insurance company had a billion dollar

17 judgment rendered against it in a particular year,

18 that money would be taken out of the surplus of the

19 company?

20 A That's correct.

21 Q And once that money was taken out of the surplus of

22 the company, the divisible surplus at the end of the

23 year would be impacted by that payout?

24 A Absolutely not.

25 Q How can that be? You can understand why I might

1 think that's hard to believe. If the surplus is less
2 than it otherwise would have been, why wouldn't that
3 affect divisible surplus?

4 A Because there is retained surplus to become a viable
5 ongoing entity; and as long as that's held at certain
6 reasonable levels, extra amounts in that surplus
7 would be utilized to provide unusual or untoward
8 payments or disbursements, such as a legal decision.
9 It would only impact divisible surplus if the
10 materiality of such payment were such that the
11 materiality or going concern status of the company
12 were to have changed.

13 As an example, in this particular
14 situation, the surplus of the company is so large
15 that this judgment would hardly be noticed. And if
16 divisible surplus were to change, then the
17 competitive position of a company relative to the
18 other companies that it compares itself to every week
19 of its life would change. The company does not want
20 that to happen, it would not happen in this instance
21 most assuredly, and so divisible surplus would not be
22 changed by a dollar.

23 Q Have you interviewed anybody at Northwestern Mutual
24 to determine whether in fact they would alter the
25 divisible surplus at the end of a year based on

1 judgment rendered in this case?

2 A No, nor do I have to to reach that conclusion. What
3 I have been involved in is well over 100 legal
4 assessments which were many, many, many times the
5 magnitude that we're speaking in this instance, which
6 had no impact whatsoever on divisible surplus.

7 Q How would you know that in those situations there was
8 no impact on the divisible surplus given the fact
9 that the divisible surplus would have been determined
10 after the legal liability had been entered?

11 A By looking at what happened after legal judgment was
12 rendered and seeing the ongoing performance of a
13 given company. You can see that its divisible
14 surplus was maintained at the relative levels it was
15 prior to any judgment. And while the aggregate
16 surplus of a company would certainly be impacted by
17 the dollars paid out, divisible surplus can be
18 impacted, but it would not in this instance.

19 Q Are you saying that the divisible surplus over time
20 is not related to the amount of surplus in aggregate?

21 A No, I never said that.

22 Q You have just said that a judgment could affect the
23 amount of surplus in aggregate; correct?

24 A It will affect the amount of surplus in aggregate.

25 Q And the divisible surplus that is determined on a

1 year-end basis is based on in part the amount of
2 aggregate surplus?

3 A In part. Lesser than other items. It is not a major
4 part.

5 Q If Northwestern Mutual were to suffer, say, a billion
6 dollar loss on investment in a particular year, would
7 that impact divisible surplus?

8 A That and where does divisible surplus come from.
9 Divisible surplus comes from the performance of the
10 company in a given year to a large part. That is the
11 material portion of divisible surplus. What you are
12 saying right now is if the investment performance
13 were to decrease substantially, that would be a basis
14 to change divisible surplus. It would not require a
15 change in divisible surplus, but it certainly could.

16 Q But in your opinion, a mutual insurance company would
17 treat a \$1 billion liability as different than a
18 \$1 billion investment loss for purposes of
19 determining a divisible surplus?

20 A I'm saying it could. Now, an insurance company that
21 has 800 million in assets and has a \$1 billion
22 assessment is out of business. So it depends. And
23 it can vary, it can be the same, but an insurance
24 company changes divisible surplus only when they have
25 to or all companies are making that change. But any

1 major company will not change divisible surplus if
2 their competitors are not changing divisible surplus
3 because that is a competitive disadvantage which is
4 not acceptable.

5 Q Do you recall having provided an affidavit in the
6 Noonan matter regarding whether a judgment in that
7 case would have an impact on divisible surplus of the
8 company?

9 A I believe I did that, yes, sir.

10 (Deposition [Exhibit No. 8](#) was marked for
11 identification.)

12 BY MR. GRIMSLEY:

13 Q I'm going to show you what's being marked as
14 Deposition [Exhibit No. 8](#). And this is a printoff
15 from Westlaw of what I believe is your affidavit.
16 Please take a look at that, and let me know if this
17 is at least a copy of the text of the affidavit that
18 you submitted in the Noonan case.

19 A This is a copy of it. It does not have a date on it.
20 Oh, I'm sorry, March 8, 2005.

21 Q So that would have been about eight years ago now?

22 A Yes, sir.

23 Q And were you working at that point in time for the
24 same attorneys that you're working for now?

25 MR. KERSTEN: He was working for the

1 client, but the same attorneys appeared for that
 2 client, counsel. With that modification we will so
 3 stipulate.
 4 BY MR. GRIMSLEY:
 5 Q Were the same attorneys paying you in that matter as
 6 in this matter?
 7 A Over the years, the attorney compilation has changed;
 8 but Mr. Kersten and his firm was involved at that
 9 time, yes, sir.
 10 Q You were working with Mr. Kersten at the time you
 11 submitted this affidavit?
 12 A Yes, sir.
 13 Q Now, do you recall that Northwestern Mutual argued in
 14 the Noonan matter that a class action might not be in
 15 the best interest of individuals who also hold a life
 16 insurance policy because a judgment might have an
 17 impact on the divisible surplus?
 18 A They did make that statement, yes, sir.
 19 Q And this was an affidavit that you submitted in
 20 support of the contrary argument?
 21 A Well, in this affidavit I say that's clearly an
 22 erroneous statement.
 23 Q Looking at Page 2, if you would.
 24 A (Witness complies.)
 25 Q And at the top it has two specific questions you were

1 asked; do you see that? The first is, "Will NML
 2 policyholders, other than the specified class
 3 members, be adversely affected if NML is forced to
 4 pay damages to the class members as a result of this
 5 action?"
 6 A Yes, sir.
 7 Q And then the second is, "Are the interests of the
 8 Noonans in fact antagonistic to those of class
 9 members who also own NML-issued life insurance
 10 policies. That is, does the 'conflict of interests'
 11 between them, as suggested by NML's attorneys, really
 12 exist?"
 13 A Yes, sir.
 14 Q You actually then did a calculation of past damages
 15 assuming a nationwide class were certified, did you
 16 not?
 17 A I quantified a rough estimate of what the difference
 18 might be.
 19 Q Look at Paragraph 13, if you would, please. It says,
 20 "Based on the information produced by NML to date,
 21 past damages to the annuity class approximates
 22 \$150 million with future adjustments of less than \$10
 23 million per year and declining." Do you see that?
 24 A Yes, sir.
 25 Q You testified that that \$150 million would not have

1 an impact on the divisible surplus?
 2 A That is correct.
 3 Q What is the amount of past damages that the annuity
 4 class today would be entitled to if they were to
 5 prevail on all claims in their lawsuit?
 6 MR. KERSTEN: Counsel, you mean for him to
 7 take these figures and update them? Is that what
 8 you're asking?
 9 BY MR. GRIMSLEY:
 10 Q I'm asking what the calculation is.
 11 A Your using the term "past damages." My current
 12 report only quantifies difference, which is part of
 13 that, a major part. But as shown in my report, I did
 14 not reach a final conclusion because I did not apply
 15 it to all members of the policyholder group.
 16 Q Do you have a sense of what the accumulated
 17 difference, which is part of the damages that
 18 plaintiffs are seeking, would amount to in this case
 19 as of say the beginning of 2013?
 20 A No, I do not.
 21 Q Would it be greater or less than \$150 million?
 22 A I'm not sure.
 23 Q You have no idea?
 24 A I have no idea which side of that it might be on. I
 25 would have to run the numbers. That wasn't what I

1 was asked to do in this instance.
 2 Q So you don't know sitting here today what the
 3 accumulated difference would be in terms of the
 4 magnitude of that difference if you looked at all
 5 class members through 2013?
 6 A That is correct, sir.
 7 Q So you cannot testify what the relative difference is
 8 between that accumulated difference for the entire
 9 class as of 2013 and the amount in Northwestern
 10 Mutual's current surplus?
 11 A I don't think that's a fair representation. If
 12 counsel asked me to quantify that, I would certainly
 13 be able to quantify it, especially now that we have a
 14 methodology, and I would hence be able to testify
 15 with respect to the question that you have laid
 16 forth. I wasn't asked to do that, and as today I'm
 17 not prepared to testify on that basis.
 18 Q That analysis is not contained in your report?
 19 A That's correct.
 20 Q What was the methodology that you utilized back in
 21 2005 to come up with the \$150 million in past
 22 damages?
 23 A Oh, I haven't -- I haven't looked through this
 24 affidavit in close to a number of years, so it's very
 25 difficult for me to specify today what I did eight

years ago.

Q How if at all did it resemble the --

MR. KERSTEN: I'm not sure the witness was done.

BY MR. GRIMSLEY:

Q Oh, that's fine.

A No, I was done.

Q I thought so. How if at all did the methodology you employed back in 2005 differ from the one set forth in your March 4th, 2013 report?

A Well, there is a primary difference, and that's a function of what I was asked to do. In 2005 I was asked to react to the question that this would impact other policyholders of NML, so I did a very rough calculation just to provide myself with some perspective as to what we were talking about, reached the value that I'm showing here in this affidavit, and then made the logical conclusion that it certainly would not impact the other policyholders of NML.

Now, currently I have been asked a different thing, to provide a methodology which will calculate that difference in a reasonable, fair, and accurate way, so this is clearly a much more detailed analysis currently than the earlier one, but it's

been done for a totally different purpose and I was asked a different thing.

Q Do you have any idea what --

MR. KERSTEN: Excuse me, when he used the word "this" last answer, he was referring to Exhibit 6. He pointed to that.

THE WITNESS: No, no, no, [Exhibit 3](#).

MR. KERSTEN: [Exhibit 3](#), I'm sorry.

BY MR. GRIMSLEY:

Q What number, in terms of the accumulated difference, would your model yield if you had looked at it as of March 2005?

MR. KERSTEN: Excuse me, Ms. Reporter, could you just repeat that question?

(Question read aloud by the reporter.)

THE WITNESS: I have no idea.

BY MR. GRIMSLEY:

Q Would it be anywhere in the ballpark of \$150 million?

A I'm sorry, I have no idea.

Q You go on to say that a \$150 million judgment would be immaterial for purposes of Northwestern Mutual Life's current policyholder dividend amount?

A It is immaterial to the annual calculation of divisible surplus at NML -- NML relative to life insurance policyholders, that is correct.

Q Well, you point out that the amount of dividends were over \$4 billion in the 2005 time period?

A That is correct.

Q And you thought \$150 million would be immaterial to that, especially where there was a surplus of 9 billion?

A Especially as I -- as we indicated in earlier questions, the 150 million would be paid out of 9 billion. So instead of 9 billion, you would have 9 billion, and hence divisible surplus can proceed exactly as if it had not been paid.

Q What amount, in your mind, given the \$4 billion dividend amount and the \$9 billion company surplus would be material in terms of a judgment?

A That's a question that hasn't been asked. I could render an opinion on that, but I would have to do an analysis and consider possibilities and trends, and that's an analysis I haven't done to date.

Q There is nothing in your report about that?

A No.

Q Now, when you were assessing or estimating past damages back in 2005, did the \$150 million include punitive damages or interest?

A No, it did not.

Q Can you explain any differences between the

methodology you have adopted now in your March 4, 2013 report to come up with accumulated difference and the methodology used back in 2005 to come up with the \$150 million number?

A Well, I indicated just a couple questions ago that the current methodology is much more detailed and it's designed as a basis for which an actual difference can be quantified. The earlier one was simply to get a ballpark rough estimate as to whether it was going to impact divisible surplus to life insurance policyholders. Very different calculation.

Q But before signing the affidavit you wanted to make sure that the number you came up with was at least roughly correct, didn't you?

A I'm comfortable that it was.

Q You just don't know how you came up with it today?

A No, I did that more than eight years ago, so today I can't specify what I did eight years ago.

Q You also calculated that the ongoing adjustments per year would be \$10 million and declining?

A That's correct.

Q What, if you were to apply your model today, would the ongoing yearly payment be?

MR. KERSTEN: You mean on a group basis?

BY MR. GRIMSLEY:

1 Q On a group basis. That's what he calculated back in
2 2005.
3 A I have no idea.
4 Q Do you have even a rough sense of what that would be?
5 A Not at all.
6 Q You have not performed that analysis and it's not
7 contained in your report?
8 A I have not quantified any difference in my report.
9 My report was to get -- to generate or produce a
10 methodology which could be used to do so, but I have
11 not done so.
12 Q You have not personally gone through the analysis
13 that you did back in 2005 to determine whether and to
14 what extent a judgment in this case, applying your
15 model, would impact divisible surplus?
16 A Yes, I have.
17 Q What calculation have you done and where is it?
18 A I have not done a calculation, I have done an
19 analysis -- a numerical analysis. And it's a
20 function of divisible surplus, possible judgment in
21 this instance and difference, and the total corporate
22 surplus, and I have concluded that there is no need
23 for an adjustment.
24 Q Without knowing what the possible judgment might be
25 in this case, how would you perform that analysis?

1 A I have some basis to estimate the judgment in this
2 case short of what a court could impose, which is
3 strictly a function of the court. That has nothing
4 to do with what I do, and the simple quantification
5 of difference will not impact other policyholders.
6 Q You said you have a basis for assessing what you
7 think might be a judgment in this case. What is your
8 estimate, sitting here today, as to what a judgment
9 in this case might be?
10 A I will reiterate. I have laid forth a methodology, a
11 formulaic mechanical process by which a difference
12 can be calculated. Your question I think used the
13 term judgment. Judgment to me represents final
14 decision of the court. I'm just putting forth a
15 process by which we can get a difference. If someone
16 in the court decides that interest should be applied
17 in some form, that's beyond the scope of my analysis.
18 If someone wants to talk about expenses or punitive
19 damages, that clearly is done in lawsuits, it's
20 beyond the scope of my analysis.
21 So do I have even a ballpark estimate
22 as to what judgment could be? I have no concept of
23 what judgment could be.
24 Q Absent knowing what the judgment could be, how can
25 you determine whether a judgment in this case could

1 have an impact on Northwestern Mutual's divisible
2 surplus?
3 A Well, looking at the process that I have developed
4 for difference, and I even did that in a very crude
5 manner eight years ago, those figures in and of
6 themselves are nowhere near sufficient to impact
7 divisible surplus.
8 Q Putting aside punitive damages or interest, what is
9 your best estimate of what the accumulated difference
10 would be in this case as of the beginning of 2013,
11 which you say would be immaterial to Northwestern
12 Mutual's divisible surplus?
13 A I didn't say that. What I said was, that whatever
14 that value is, I have not yet determined it. I have
15 not been asked to determine it. That would not
16 impact. It doesn't mean it's irrelevant or
17 immaterial relative to, it just means that an
18 insurance company would not allow it to impact
19 divisible surplus other than if it had to, and it
20 doesn't have to.
21 Q And where is the analysis that you have performed
22 whereby you have determined that Northwestern Mutual
23 would not as a result of your accumulated difference
24 have to alter divisible surplus?
25 A That analysis incorporates, most assuredly, my

1 consulting work with most life insurance companies
2 regarding their dividend calculations and
3 determinations and divisible surplus. So in that
4 regard, my cumulative knowledge of divisible surplus
5 and mutual insurance company operation gives me a
6 very good perspective as to a basis to conclude that
7 the numbers that I have seen here are not substantive
8 to the extent of adjusting divisible surplus.
9 Q Are current life insurance policyholders for
10 Northwestern Mutual better or worse off if there were
11 a \$500 million judgment taken out of surplus?
12 A Since they are in part owners of the company and the
13 company has less surplus than it had the day before,
14 they are certainly not better off. However, the
15 ownership rights of an individual policyholder are
16 only exercised to their full extent in a tontine
17 situation of which we are not involved in here,
18 therefore it's irrelevant.
19 Q The size of accumulated surplus, however, could
20 impact dividends that are paid not only in the year
21 of a liability loss, but also in subsequent years by
22 virtue of the fact that the company has less money to
23 invest; correct?
24 A I have already suggested to you that I have looked at
25 this, I have substantive knowledge in this area, and

1 it's not going to impact. So would it impact? No,
 2 it's not going to impact.
 3 Q That analysis is not in your report though?
 4 A I was not asked to do that analysis so that's why
 5 it's not there.
 6 Q You do a sample calculation for Ms. LaPlant in your
 7 report?
 8 A Yes, sir.
 9 Q And you come up with an accumulated difference of
 10 34,357. You can look at -- I don't want to -- It's
 11 Table 10, I believe. No, I'm sorry.
 12 A Table 11, that is correct.
 13 MR. KERSTEN: I think it's Tables 10 and
 14 11, counsel. You were asking about 10.
 15 THE WITNESS: The difference is in 11.
 16 MR. KERSTEN: The difference is given in
 17 11.
 18 BY MR. GRIMSLEY:
 19 Q How many class members, to your knowledge, have an
 20 accumulated difference that would be higher than Ms.
 21 LaPlant's?
 22 A I have no idea.
 23 Q Do you have any idea as to how many policyholders
 24 would have an accumulated difference using your model
 25 that is less than Ms. LaPlant's?

1 A I have no idea.
 2 Q Do you have any sense of where Ms. LaPlant's
 3 accumulated difference falls in the spectrum of
 4 potential accumulated differences for various class
 5 members?
 6 A I have no knowledge of that.
 7 Q Would you expect that different class members would
 8 have different accumulated differences?
 9 A Most assuredly.
 10 Q Do you know what the accumulated difference would be
 11 for Mr. Williams, the other individual who has been
 12 identified as a potential class representative in
 13 this case?
 14 A No, I do not.
 15 Q Have you ever talked with Ms. LaPlant?
 16 A Yes, I have.
 17 Q When was that?
 18 A The days that I testified in court.
 19 Q Is \$34,357 significant to Ms. LaPlant?
 20 A I have no idea. She would have to opine as to that.
 21 Q Do you think that that would be a substantial claim
 22 for her?
 23 A I have no idea.
 24 Q Would that be a substantial claim to you, \$34,000?
 25 A I would rather have it than not.

1 Q Would, in your opinion, that be a substantial claim,
 2 \$34,000?
 3 A That's a claim. I can't say, other than myself, what
 4 the impact would be to an individual.
 5 Q You would have to ask that particular individual?
 6 A I don't -- I don't care to ask them and nor do I care
 7 what their answer is.
 8 Q What, in your mind, would be obviously a substantial
 9 claim? \$50,000?
 10 MR. KERSTEN: Objection as irrelevant and a
 11 waste of time, counsel.
 12 THE WITNESS: Yeah, I have no opinion as to
 13 what an individual might think and what an
 14 individual's perspective or background is. I have
 15 laid forth a methodology which can apply to the total
 16 of the class group, subset of the class group, or to
 17 individuals.
 18 BY MR. GRIMSLEY:
 19 Q Do you have any sense of what the largest individual
 20 accumulated difference would be applying your model?
 21 A Absolutely none.
 22 Q Is it over \$100,000?
 23 A I just said I have no idea.
 24 Q You don't know how many people in the putative class
 25 might have accumulated differences in excess of

1 \$100,000?
 2 A I have no idea.
 3 Q But that's something we can figure out from
 4 application of your model?
 5 A Certainly.
 6 MR. GRIMSLEY: Why don't we take a break.
 7 THE VIDEOGRAPHER: Going off the record,
 8 3:11 p.m.
 9 (Off the record.)
 10 THE VIDEOGRAPHER: We're back on the record
 11 at 3:19 p.m.
 12 BY MR. GRIMSLEY:
 13 Q Please go to Paragraph 25 of your report.
 14 A (Witness complies.)
 15 Q Are you there?
 16 A Yes.
 17 Q And that's the last bullet point -- No, there is a
 18 number of bullet points in that paragraph; is that
 19 correct?
 20 A That is correct.
 21 Q And those are bullet points in support of your
 22 assumption that it is reasonable to treat the life
 23 rate and annuity rate as comparable in the "but-for"
 24 world?
 25 MR. KERSTEN: Objection as to the word

"assumption." I think he has -- Well, object to the word "assumption."

THE WITNESS: Those are the bases for my opinion as rendered in Paragraph 24.

BY MR. GRIMSLEY:

Q I want to look at the last bullet point which actually is on Page 6. Are you there?

A Yes, sir.

Q It says, "The expense dividend factor for life and annuity policyholders has historically been comparable." What did you do to come to the conclusion set forth in that sentence?

A I reviewed as many quantifications of those dividend factors for life and annuity as were available and compared and contrasted.

Q Would those documents that you reviewed and relied upon be cited in the two appendices that we looked at earlier, the one from your June 30, 2010 report and the second one from your March 4th, 2013 report?

A As we have also indicated, I have seen and rendered documents prior to 2010, so it's conceivable I saw other comparatives over and above those two; but several are listed in this instance, yes.

Q But any of the ones you actually relied upon would be listed in one of those appendices?

A Yes, sir.

Q I don't have to go outside of the appendices to find some other document that you may be relying upon?

A It's possible such a document exists and it would be cited in my earlier affidavits or reports.

Q The next sentence says, "any disintermediation" -- Let's go back to the first sentence. You said you performed an analysis in support of that determination of the various documents you had access to?

A I read and reviewed and compared and contrasted.

Q Did you perform any sort of analysis or quantification?

A That is an analysis.

Q How would an individual with actuarial expertise reconstruct or recreate your analysis?

A By going to those kinds of documents and reading and reviewing and comparing and contrasting.

Q What in your mind is comparable in this sentence?

A Well, what I saw is that in certain instances, the life rate was somewhat higher than annuity. In certain instances the annuity rate was higher than the life, for certain instances, the life and annuity rate were identical, and there appeared to be no unusual or untoward trend thereof that I should

reflect in my opinion.

Q What in your understanding was the difference in the life rate and annuity rate prior to 1985 attributable to? Was it just expense factor issues?

A Yes, sir.

Q Were there any other issues that contributed prior to the 1985 change to the fact that in many years the life rate and annuity rate was different?

A Not that I'm aware of.

Q Are there other types of factors that -- besides the expense factor that could result in a different life versus annuity rate in the years prior to the 1985 change?

A Well, it's possible that mortality, which impacts life insurance, could factor in to the life insurance policies and not the annuity policies, so that's always a possibility.

Q Are there any other factors that you can think of that would impact potentially the differential in the rates between the life insurance and annuity policy prior to the 1985 change?

A Only the determinations made by management, and there is always some flexibility that management has in determining dividend rates.

Q How would flexibility that management has determine

or impact the differential between the annuity rate and life rate in the years prior to the 1985 change?

A It could be that there was competitive pressure in one product more than another, and they increased the dividend rate for one product slightly, immaterially, but still that helps their competitive posturing.

Q Are there any other decisions that are in the discretion of the individuals running the life insurance company that might impact the differential between the life rate and the annuity rate in the years prior to the 1985 change?

A No, other than what we have stated.

Q You can't think of anything else sitting here today?

A There aren't anything else other than what we stated today.

Q Look at the next sentence in the bullet point at the top of Page 6. It says, "Any disintermediation and/or dilution charges as suggested by Mr. Trost would be unwarranted, improper, and inequitable, so I make no adjustment for them." Do you see that?

A Yes, sir.

Q And then you cite in Footnote 12 to the affidavit of Chris Trost dated April 15, 2011?

A Yes, sir.

Q I want to show you that affidavit, so I'm going to

1 mark it as Deposition Exhibit 9.
 2 (Deposition Exhibit No. 9 was marked for
 3 identification.)
 4 BY MR. GRIMSLEY:
 5 Q And is that the affidavit of Mr. Trost dated
 6 April 15th, 2011 that you're referring to in Footnote
 7 12 of your March 4, 2013 report?
 8 A Well, I have two affidavits of Mr. Trost identified
 9 in this report, so what is the question with regard
 10 to this one.
 11 Q I'm asking about whether this in Exhibit 9 is the
 12 affidavit that you have identified in Footnote 12 to
 13 your March 4th, 2013 report. And I might suggest you
 14 look at Footnote 12.
 15 A I'm sorry, look at what?
 16 Q Footnote 12 in your March 4th, 2013 report.
 17 A Uh-huh.
 18 Q Do you know it cites to an affidavit of Chris Trost
 19 dated April 15 of 2011?
 20 A Yes, sir, it does.
 21 Q Is the affidavit of Mr. Trost in Exhibit 9 the
 22 April 15th, 2011 affidavit that you are citing in
 23 Footnote 12 of your report?
 24 A That's what it states in the report, yes, sir.
 25 Q And you are citing to Paragraph 4 of Exhibit 9 in

1 Footnote 12 of your report; is that correct?
 2 A That is correct.
 3 Q You do not, however, cite Paragraph 5 in Footnote 12,
 4 if you look at your report?
 5 A That is correct.
 6 Q And as to Paragraph 4, you say that "Any
 7 disintermediation and/or dilution charges referenced
 8 in Paragraph 4 would be unwarranted, improper and
 9 inequitable"; correct?
 10 A That is correct.
 11 Q You do not, however, point out the expense
 12 considerations that Mr. Trost also includes in
 13 Paragraph 4; is that right?
 14 A I don't have a clue what Mr. Trost is suggesting
 15 regarding expense.
 16 Q Well, Mr. Trost says, "The Company would have
 17 assessed expense, disintermediation, and dilution
 18 charges on the annuity dividend interest rates, which
 19 would have led to different final rates than the
 20 rates paid on life insurance products." Do you see
 21 that?
 22 A They have already done that for years, and I have
 23 already analyzed that they are comparable. So that's
 24 history, that's beyond us.
 25 Q So it is your opinion that the company could assess

1 different expense charges to the different policies
 2 even though they are in the same investment income
 3 experience factor class?
 4 A They have done that every year since existence.
 5 Q And there is nothing wrong with that from an
 6 actuarial standpoint?
 7 A No, absolutely not, it's the values that are
 8 specified in the policy.
 9 Q Now, you say that the disintermediation and dilution
 10 charges would be unwarranted, improper, and
 11 inequitable. Do you see that?
 12 A State your question again, please.
 13 Q You say in your report that the disintermediation
 14 and/or dilution charges referred to by Mr. Trost
 15 would be unwarranted, improper and inequitable.
 16 A Those suggested by Mr. Trost, yes.
 17 Q Okay. And what is the basis for you saying that they
 18 would be unwarranted, improper, and inequitable?
 19 A Well, why they would be, there is two separate items,
 20 and they are separate items, and --
 21 Q Let's take them one by one. Why would the
 22 disintermediation charge be unwarranted, improper and
 23 inequitable?
 24 A The disintermediation charges suggested by Mr. Trost,
 25 which is that the company, if they had not used

1 segmentation, they would have assessed a
 2 disintermediation charge. They already have and they
 3 have since the beginning of these policies.
 4 Mr. Trost is suggesting that they could have
 5 increased the disintermediation charge. That they
 6 cannot do. So it's fine to assess a
 7 disintermediation charge, which the company has.
 8 Q Is the disintermediation charge, the amount of it,
 9 specified anywhere in the policies?
 10 A Yes.
 11 Q Where?
 12 A In the expenses that are charged to the
 13 policyholders.
 14 Q Is the particular amount of disintermediation charge
 15 actually specified in the policy?
 16 A No, never is.
 17 Q Is it your testimony that there is a reference to
 18 disintermediation charges specifically in the
 19 policies at issue in this case?
 20 A No, not at all.
 21 Q So what in the policy do you see as identifying
 22 specifically disintermediation charges?
 23 A I haven't said that.
 24 Q So is there anything in the policies that are at
 25 issue in this case that references a

1 disintermediation charge?

2 A No.

3 Q I'm just confused. You said that --

4 MR. KERSTEN: I will stipulate to that.

5 MR. GRIMSLEY: You're confused too?

6 MR. KERSTEN: No, I have stipulated to your

7 confusion.

8 MR. GRIMSLEY: Well, thank you, George, I

9 appreciate that.

10 BY MR. GRIMSLEY:

11 Q Northwestern Mutual, you said, has for a long time

12 been applying a disintermediation charge?

13 A Absolutely.

14 Q And that was prior to the 1985 change?

15 A Of course.

16 Q And they have been applying that to the annuity

17 policies differentially than the life policies?

18 A Certainly.

19 Q Where is it specified as to what the amount of a

20 disintermediation charge can be?

21 A It's not.

22 Q Is it specified anywhere in the policies themselves

23 what the size of the disintermediation charge could

24 be?

25 A No.

1 Q What's the basis for your opinion that Northwestern

2 Mutual prior to the 1985 change had been charging a

3 disintermediation charge to annuity policies?

4 A Because every company assesses a disintermediation

5 charge to annuitant policyholders. It's one of the

6 risks of the policy.

7 Q And how does a company go about determining on a

8 yearly basis what the disintermediation charge would

9 be?

10 A On a year by year basis?

11 Q Yes.

12 A They don't.

13 Q When do they determine it?

14 A When they develop the policy.

15 Q Where if anywhere in the materials that are provided

16 to the policyholders themselves is the size of the

17 disintermediation charge provided?

18 A It's not.

19 Q The policyholders themselves then have absolutely no

20 idea what the size of the disintermediation charge

21 would be when they are purchasing their policy?

22 A No different than they have no idea what the profit

23 charge is.

24 Q How about a dilution charge. Why do you believe that

25 the dilution charges suggested by Mr. Trost -- Let me

1 stop.

2 Is it your opinion that once a policy

3 has been created, that after that point in time a

4 mutual insurance company cannot change the size of

5 the disintermediation charge?

6 A That's correct.

7 Q What is the basis for that statement?

8 A That that is included in this instance in the

9 specified charges that they're making to

10 policyholder.

11 Q Where are those specified charges set forth?

12 A In the policies.

13 Q Where in the policies is a disintermediation charge

14 set forth?

15 A It's not.

16 Q So what part of the policy is it in your mind that

17 includes this disintermediation charge?

18 A The expense charges to policyholders.

19 Q But those are not set out expressly in the policy

20 themselves?

21 A Most assuredly they are.

22 Q Okay. Where is the disintermediation in the policy?

23 A In the expense charges to policyholders.

24 Q Where are the expense charges set forth in the

25 policy?

1 A There is -- for Ms. LaPlant's policy, for instance,

2 there is a front-end load for every deposit, there is

3 an ongoing expense charge. Those are incorporating

4 what the company expects expenses will be, most

5 assuredly an element of profit, which is never told

6 to the policyholder, and it covers all the risks

7 associated with the policy such as disintermediation.

8 If a company doesn't consider the risks and provide

9 for them within the policy, they haven't done their

10 job.

11 Q Are you of the opinion that once the policy is agreed

12 to, there is no discretion to change the

13 disintermediation charge?

14 A That's absolutely correct.

15 Q Okay. And the basis for you saying that is the

16 policy itself?

17 A The policy specifies what those charges will be. The

18 company is the one who determines it. They are the

19 ones who quantify it, they're the ones who set it

20 forth before a policyholder. And when the

21 policyholder agrees to those terms, then the

22 insurance company cannot, after the fact, say the

23 provisions that I made I no longer like.

24 Q Is there anything you can point to that says you can

25 make no additional expense charges when coming up

1 with the DIR other than those that are reflected
2 specifically in the expense provisions of the policy
3 itself?

4 A The policy itself frequently indicates that certain
5 expenses can be determined each year, so it's very
6 possible for the policy and the agreement to indicate
7 that expenses can be charged each year. It also is
8 very common for a policy to specify that these will
9 be the charges. An insurance company can structure
10 their policy any way they want and then they put it
11 forth and it becomes a legal agreement between two
12 entities. But clearly if an insurance company has
13 misassessed the risks to which they are subject to,
14 they cannot go back after the fact and say I want to
15 change the deal that I made, no.

16 Q If the disintermediation charge is not itself
17 specified in the contract, how would it be changing
18 the deal to alter the disintermediation charge in
19 subsequent years?

20 A I also indicated that when a company develops the
21 policy and structures it, that they also have profit
22 charges. Those profit charges are never provided to
23 the policyholder, they're part incorporated within
24 the policy. The company expects to make money on
25 that policy and they also consider every risk to

1 which the policy is subject, and one such risk would
2 be disintermediation. So they have quantified that.
3 They don't spell it out and indicate it to a
4 policyholder, that's of no value to do that, but it's
5 incorporated. And to the extent it is on the LaPlant
6 policy, it specifies: Your expense charges will be.
7 And for that type of policy, no, you can't say "I
8 don't like the way the risks that I was subject to
9 when I developed the policy based on, I don't like
10 the way they're trending therefore I'm going to
11 change the deal that I made," no, that's the part
12 that -- Well, Mr. Trost is throwing that out as a we
13 could have done such and so. No, he would not be
14 allowed. And why would he not be allowed? Because
15 it would be unwarranted, it would be improper, it
16 would be inequitable.

17 Q Is there a particular actuarial standard that would
18 speak to that issue?

19 A There is general actuarial standards which talk about
20 reasonable -- being reasonable and fair in treatment
21 of policyholders. And certainly when you are the
22 ones, "you" being a company or an actuary, when you
23 quantify and develop all the parameters of a policy
24 and say this is the deal I want you to make with me,
25 then fair and equitable treatment certainly says you

1 must be held to the parameters of that agreement.

2 Q In terms of investment income experience factor
3 classes, there would be no requirement at the outset
4 of putting together the Pre-MN annuity policies that
5 Northwestern Mutual place those policies in the same
6 investment income factor class as life insurance
7 policies; correct?

8 A That's an intricate question. I would have to hear
9 it carefully piece by piece.

10 (Question read aloud by reporter.)

11 THE WITNESS: I disagree.

12 BY MR. GRIMSLEY:

13 Q When Northwestern Mutual came up with its Pre-MN
14 annuity policies, it could have chosen at that point
15 in time to put those policies in a different
16 investment income factor class than life policies?

17 A That is not correct.

18 Q The CRA policies are annuity policies; correct?

19 A That is correct.

20 Q They are in a different investment income experience
21 factor class than life insurance policies?

22 A That is correct.

23 Q Northwestern Mutual could have designed a Pre-MN
24 annuity policy that was not in the same investment
25 income experience factor class?

1 A That is correct.

2 Q And in that case, if Northwestern Mutual at the
3 outset had decided to put those annuity policies in a
4 different investment income experience factor class,
5 it could have treated those annuities differently
6 than life insurance for purposes of calculating DIRs?

7 MR. KERSTEN: Objection --

8 THE WITNESS: That's not correct. That's
9 not correct.

10 MR. KERSTEN: I would just like to record
11 an objection as to the ambiguity of the word "those"
12 in the -- incorporated in the question because it
13 makes it ambiguous in its form.

14 BY MR. GRIMSLEY:

15 Q You just acknowledged that at the outset -- at the
16 outset Northwestern Mutual if it had decided --
17 Strike that.

18 You acknowledge that Northwestern
19 Mutual could have designed an annuity policy -- a
20 Pre-MN annuity policy at the outset that was in a
21 different investment income experience factor class
22 than life insurance policies?

23 A That is correct.

24 Q You're saying that Northwestern Mutual did not do
25 that in fact, but they could have done that?

1 A That's absolutely correct.

2 Q And if Northwestern Mutual had decided to do that

3 back when they developed the policies, they could

4 have then after that point in time applied different

5 investment income experience factor values to the two

6 types of policies?

7 A That is accurate, and I'll elaborate just to make

8 sure you're clear. The development of that policy

9 includes the pricing, the sales, the communication.

10 Such as your example of CRA annuities, that's the way

11 they were sold, that's the agreement that

12 policyholders agreed to, and certainly you could use

13 a different -- you could do anything that the two

14 parties agreed to. That was not the case for the

15 Pre-MN annuities. They could have structured a

16 policy differently and sold it differently and

17 communicated it differently. They did not. So the

18 second part of your questions before were could they

19 then selling it one way have decided they would --

20 No, they can't do that.

21 Q Do -- Do you have any opinion or have you provided

22 any opinion in conjunction with this report as to

23 when particular members of the putative class became

24 aware of the fact that the annuity policy rate was

25 less than the life rate?

1 MR. KERSTEN: Do you mean the Wisconsin

2 people or other people?

3 BY MR. GRIMSLEY:

4 Q Any people.

5 A Yeah, I do not know individually. And certainly as a

6 class, I would just make the assumption that they

7 began to become aware when the rates for life and

8 annuities started to diverge somewhat.

9 Q That would have been in roughly 1993?

10 A I'm not even sure exactly when that would be.

11 Q Just look at Exhibit 5, again, I think it is, which

12 has the rates themselves, or you can look in your

13 report, Page 6, actually, which we were looking at

14 which has the rates. Do you see that?

15 A Yes.

16 Q And there is a chart there, Table 1, that has the

17 rates. When would you say that the actual annuity

18 rate and the actual life rate began to diverge

19 significantly?

20 A Just looking at numbers, I really -- I don't know

21 what significance translates to in this instance. So

22 I can see differences and I can see differences

23 getting larger, but I'm not sure how to answer your

24 question because that wasn't part of my analysis and

25 it's just a visual representation here.

1 Q You don't have an opinion one way or the other as to

2 at what point the difference would be substantive?

3 A I never spoke to a policyholder about that, and I

4 have no idea what would translate in this, from just

5 looking at this chart.

6 Q Looking at Page 5 of your report, please. And look

7 at the last sentence before Section 5 determining the

8 DIR but for the 1985 change. You see it says "From

9 1993 through the current timeframe, the Pre-MN

10 annuitants received substantively lower dividends as

11 a result of the 1985 change."

12 A I apologize, I'm not sure where you are.

13 MR. KERSTEN: Counsel, where are you?

14 BY MR. GRIMSLEY:

15 Q I'm on Page 5 of his report at the top.

16 A Oh, on the top of the page, I'm sorry.

17 Q It's the last sentence right before Section 5. It

18 says, "From 1993 through the current timeframe the

19 Pre-MN annuitants received substantively lower

20 dividends as a result of the 1985 change." Do you

21 see that?

22 A That's correct.

23 Q What did you mean by "substantively lower dividends"?

24 A Strictly a visual comparative between two numbers.

25 So it's not an actuarial opinion, it's just an

1 observation.

2 Q So if you go back to the chart on Page 6, in -- and

3 keep in mind the sentence from Page 5, you are saying

4 that as of 1993 the difference between the two is

5 substantive?

6 A Well, I'm saying it certainly is getting larger in an

7 increasing manner here. So, yes, it's substantive

8 there. That's not an actuarial opinion, it's just an

9 observation.

10 Q And how many people at the point in time, 1993, owned

11 both a Pre-MN annuity and a Northwestern Mutual life

12 insurance policy?

13 A I have no idea.

14 Q You haven't looked at that at all?

15 A Not at all.

16 Q So you don't have an opinion as to how many people

17 have noticed there was a difference?

18 MR. KERSTEN: Objection as to whether they

19 can tell the difference, counsel, conceivably under

20 these circumstances with what they're provided in the

21 policy.

22 MR. GRIMSLEY: You have done so well.

23 Objection as to form, sir.

24 MR. KERSTEN: That's the objection.

25 MR. GRIMSLEY: That's not a form objection.

1 Objection to form is objection to form. It's not a
2 minute talking about what the objection is.

3 THE WITNESS: You're putting forth that the
4 only way to see a change is if you had both policies.
5 You know, there appears to be a downward trend on
6 annuities, so if I didn't have a life insurance
7 policy, certainly at some point here, if I were an
8 annuity policyholder, I would -- I would be aware
9 that my dividends were decreasing materially.

10 BY MR. GRIMSLEY:

11 Q At what point in time would you have been aware of
12 that, Mr. Hoyer?

13 A It would be a function -- You're saying me
14 personally?

15 Q Yes.

16 A If I had annuity?

17 Q Yes.

18 A Well, I would be aware of what the annuity dividend
19 interest rates were at ten other companies, so the
20 moment you started to decrease mine at all, I would
21 know. But that's different than the majority of this
22 class who would have one policy if that were the
23 case. They might have a different recognition point,
24 so it's -- I'm not sure.

25 Q You haven't actually asked any policyholders when, if

1 at all, they recognized that there was some sort of
2 change to the annuity policy rate?

3 A I have not asked a one.

4 Q And you have no opinion as to at what point if at all
5 particular individuals may have noticed a change in
6 the annuity policy rate?

7 A Absolutely no opinion.

8 Q You testified previously that you thought that the --
9 Are you familiar with the phasing in, the concept of
10 that?

11 A Yes, sir.

12 Q And the phasing in is the rate that Northwestern
13 Mutual applied to the annuity policies between 1985
14 and 1992; is that correct?

15 A Phasing in is the difference between what they
16 credited to the annuitant policyholders and what
17 would have been credited with a direct reflection of
18 the revised portfolio.

19 Q So in your opinion, the rates that were paid to the
20 annuity holders in the actual world for the years
21 1985 through 1992 were not the rates they would
22 otherwise have received on the segmented portfolio?

23 A That's a fair representation, yes.

24 Q What analysis have you done to substantiate that?

25 A Well, it's -- it was -- I don't think it's disputed

1 at all. I think it's been in many, many documents
2 and reports and opinions of almost the majority of
3 people involved in this -- in this dispute. I mean,
4 it's been stated by fifteen different people in
5 different ways.

6 Q And you as an actuary are not providing an opinion as
7 to the actual motive of Northwestern Mutual with
8 regard to the phasing in part --

9 MR. KERSTEN: You mean now in this --
10 Counsel, I object to that as beyond the scope of
11 this. This was a matter that was tried, including
12 the witness's testimony, and adjudicated. Are you
13 trying to go back into Northwestern Mutual's motive
14 for making the 1985 change?

15 BY MR. GRIMSLEY:

16 Q You do not have an opinion here today in this report
17 as to what motive Northwestern Mutual may have had in
18 employing the phasing in?

19 A That is correct.

20 Q And, in fact, you didn't testify at the trial as to
21 the specific motive, did you?

22 A I indicated that I have no opinion as to motive, but
23 I have an opinion.

24 Q To the extent that the phasing in period would have
25 obscured the 1985 change, that would have ended as of

1 1993; correct?

2 A That is correct.

3 MR. GRIMSLEY: That's it for me.

4 E X A M I N A T I O N

5 BY MR. KERSTEN:

6 Q Okay. I have just have one question on redirect.
7 Counsel asked you a number of questions about
8 damages, and you have testified to the difference
9 that is the product of your analysis as shown in your
10 report. I would like to ask you this question. If a
11 court should permit interest to be included in a
12 damage award for those people who have earlier
13 terminated, interest running from the termination up
14 to the time of trial, would that -- in your opinion
15 would that also be something that could be computed
16 on a formulaic or mechanical and computational basis
17 substantially equivalent to the methodology shown in
18 your report?

19 A It would be an adjunct. Not equivalent to this
20 methodology, but it certainly would be formulaic and
21 mechanical and could easily be done.

22 MR. KERSTEN: No further questions.

23 E X A M I N A T I O N

24 BY MR. GRIMSLEY:

25 Q My only question then is if the court determined that

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Marleen M. LaPlant v. Northwestern Mutual Company Insurance		Video Deposition of Robert L. Hoyer May 17, 2013	
208.10.16;2113.4; 212.12	persons (1) 150.22	199.3;200.24; 203.14;205.4;207.2; 208.10;209.7.11,23; 210.4	126.18.129.12 possession (1) 47.12
per (8) 13.17.113.1;133.8; 14.15.19.155.12; 174.23.180.19	perspective (7) 39.10.58.21; 147.10.162.1; 177.16.184.6;187.14	possibilities (2) 210.4 67.17.79.17	possibility (4) 46.25.133.15; 145.7.191.17
percent (24) 13.8.9.9.11.41.24; 70.1.3.15.14.16.19; 19.157.17.19.20.20; 158.1.2.161.3.8.10; 10.16.2.10.163.1	pertinent (1) 112.21.156.15; 203.9.9	policyholder (42) 178.6 46.5.47.19.21.56.6; 57.5.58.6.64.21; 66.22.67.2.70.7; 97.18.88.22.89.23; 90.4.131.12.13.20; 22.13.16.138.8.9; 18.20.28.20.21.24; 30.24.51.1.30.20.24; 23.18.1.21.23.24; 33.12.24.34.6.8.13; 68.16.19	pot (2) 17.1.6 65.24.81.3.83.24.25; 90.20.21.91.5.10.13; 17.92.2.95.17; 112.21.181.20.24; 90.15.17.82.21; 99.1.100.1.4.19.25; 10.1.2.5.7.10.14.20; 105.5.106.9.107.22; 109.15.19.20; 110.4.10.23.11.15; 112.15.18.23.113.2; 25.114.6.11.117.10; 118.17.122.10.14; 123.10.124.1; 129.13.132.14; 133.3.17.138.9; 143.8.144.23.24; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
percentage (11) 12.22.55.60.24; 61.2.4.22.62.1.3.5; 145.17.160.7	phasing (6) 210.9.12.15.211.8; 68.16.19	possibly (2) 25.21.77.22	potentially (3) 18.6.12 40.9.50.5.191.19
percentages (1) 135.10	pieces (1) 42.9	post (1) 166.19	practice (1) 6.11
perfectly (1) 42.23	place (8) 25.12.63.6.79.23; 90.18.136.13; 156.17.23.203.5	post-judgment (2) 192.6	practices (1) 146.15
perform (12) 40.23.41.1.52.21; 74.19.128.19; 130.2.135.3; 140.25.154.7; 161.16.181.25; 190.12	placed (1) 66.12	posting (1) 192.6	practitioner (2) 119.11.120.7
performance (3) 170.12.171.9.12	places (1) 32.3	pot (2) 23.14.24.6	practitioner (2) 119.11.120.7
performed (19) 95.4.14.98.10; 107.4.118.23; 119.15.124.14; 125.2.127.7.128.7; 18.129.13.24; 130.21.135.20; 141.16.181.6; 183.21.190.9	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	potential (4) 17.10.22.21; 186.12 40.9.50.5.191.19	practitioner (2) 119.11.120.7
performing (1) 125.15	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	potentially (3) 18.6.12 40.9.50.5.191.19	practitioner (2) 119.11.120.7
perhaps (4) 35.5.47.3.116.17; 143.19.15.16.17	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	practitioner (2) 119.11.120.7	practitioner (2) 119.11.120.7
period (14) 12.15.36.25.46.1; 22.01.22.105.7; 12.16.133.18; 134.15.140.6; 145.16.149.6;179.2; 211.24	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	practitioner (2) 119.11.120.7	practitioner (2) 119.11.120.7
permit (1) 212.11	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	practitioner (2) 119.11.120.7	practitioner (2) 119.11.120.7
permits (1) 27.2	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	practitioner (2) 119.11.120.7	practitioner (2) 119.11.120.7
person (11) 88.22.95.7.136.3; 138.18.139.15.22; 140.14.142.3;147.1; 148.11.151.5	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	practitioner (2) 119.11.120.7	practitioner (2) 119.11.120.7
personality (4) 45.5.8.181.2; 209.14	plaintiffs (7) 12.11.14.17.16.12; 37.14.44.16.48.4.5	practitioner (2) 119.11.120.7	practitioner (2) 119.11.120.7

Min-U-Script® Gramann Reporting, Ltd. (235) per - premium

Marleen M. LaPlant v. Northwestern Mutual Company Insurance		Video Deposition of Robert L. Hoyer May 17, 2013	
premiums (5) 42.10.85.7;161.2; 162.78.23	pricing (1) 105.9	126.18.129.12 possession (1) 47.12	189.13
primary (1) 177.1	principal (1) 9.19	possibilities (2) 210.4 67.17.79.17	131.17.198.21
principal (1) 9.19	principally (1) 9.2	possibly (2) 25.21.77.22	131.17.198.21
priority (1) 172.14	proprietary (1) 130.11	pot (2) 23.14.24.6	131.17.198.21
prop (57) 7.18.8.1.9.7; 10.15.11.5.36.25; 48.24.49.2.56.11; 57.21.58.12.5.66.11; 75.11.79.10.11; 82.19.98.25.99.7; 106.7.107.25.108.9; 110.5.9.111.17; 115.6.21.116.8.14; 119.17.122.10.14; 123.10.124.1; 129.13.132.14; 133.3.17.138.9; 143.8.144.23.24; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13	proper (5) 20.13.56.19.59.8; 67.9.68.23 177.1 42.14.18.46.16.18; 104.12.138.18; proposed (3) 48.12.15.18; proprietary (1) 130.11 property (1) 86.20 prospective (22) 20.13.56.19.59.8; 20.15.8.13.15.21.4; 75.11.79.10.11; 82.19.98.25.99.7; 106.7.107.25.108.9; 110.5.9.111.17; 115.6.21.116.8.14; 119.17.122.10.14; 123.10.124.1; 129.13.132.14; 133.3.17.138.9; 143.8.144.23.24; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13	30.7;133.2.16 purchasing (2) 131.17.198.21 purpose (1) 52.25 purport (2) 52.24.178.1 purpose (1) 130.11 purpose (28) 38.10.175.12 quantity (25) 37.1;78.15.79.17; 88.19.93.2.5.19; 94.11.18.10.5.3; 135.17.140.5.147.6; 149.22.159.24; 143.23.144.14; 156.25.157.9.10; 21.25.171.18; 178.21.204.6 put (18) 6.17.21.14.22.13; 37.21.66.20.126.20; 127.20.128.8; 136.13.157.9.161.2; 162.7.201.10; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13	189.13 quantified (17) 130.18.99.19.20; 76.11.77.17.88.17; 105.9.139.19.158.2; 1.6.16.12.174.17; 180.8;181.8;202.2; 213.6 quantities (2) 38.10.175.12 quantity (25) 37.1;78.15.79.17; 88.19.93.2.5.19; 94.11.18.10.5.3; 135.17.140.5.147.6; 149.22.159.24; 143.23.144.14; 156.25.157.9.10; 21.25.171.18; 178.21.204.6 quantifying (2) 64.12.11.11 Quarles (1) 4.11 quickly (1) 50.5 quote (1) 94.11.18.10.5.3 56.5
preparation (1) 12.11	problem (1) 159.21	practitioner (2) 119.11.120.7	R 31.13 range (2) 13.10.67.17 rate (90) 21.6.7.22.2.2.2.3; 20.11.15.16.25.2; 29.1.10.15.34.2; 41.23.24.67.14.15; 78.5.19.21.80.6.15; 12.22.8.16.8.9.7; 100.1.2.4.4.10.9.9; 19.10.18.18.22; 111.3.4.5.7.112.3; 24.113.3.4.8.10; 114.4.10.13.115.6; 20.1.16.7.7; 13.107.6.6.108.16; 16.213.7; 91.21.92.7.120.10 quantifiable (1) 16.14 quantification (30) 19.2.12.6.12; 86.9.11.12.16.87.7; 11.12.16.93.13.22; 19.2.12.6.12; 95.1.105.20.24; 106.4.111.21; 126.18.13.15.24; 138.18.139.15.22; 143.15.140.6; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
prepare (1) 6.26	procedures (1) 146.16	practitioner (2) 119.11.120.7	RA (1) 31.13 range (2) 13.10.67.17 rate (90) 21.6.7.22.2.2.2.3; 20.11.15.16.25.2; 29.1.10.15.34.2; 41.23.24.67.14.15; 78.5.19.21.80.6.15; 12.22.8.16.8.9.7; 100.1.2.4.4.10.9.9; 19.10.18.18.22; 111.3.4.5.7.112.3; 24.113.3.4.8.10; 114.4.10.13.115.6; 20.1.16.7.7; 13.107.6.6.108.16; 16.213.7; 91.21.92.7.120.10 quantifiable (1) 16.14 quantification (30) 19.2.12.6.12; 86.9.11.12.16.87.7; 11.12.16.93.13.22; 19.2.12.6.12; 95.1.105.20.24; 106.4.111.21; 126.18.13.15.24; 138.18.139.15.22; 143.15.140.6; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
prepared (4) 14.16;77.20;82.7; 176.17	proceed (4) 47.17.125.11; 129.19.179.10	practitioner (2) 119.11.120.7	RA (1) 31.13 range (2) 13.10.67.17 rate (90) 21.6.7.22.2.2.2.3; 20.11.15.16.25.2; 29.1.10.15.34.2; 41.23.24.67.14.15; 78.5.19.21.80.6.15; 12.22.8.16.8.9.7; 100.1.2.4.4.10.9.9; 19.10.18.18.22; 111.3.4.5.7.112.3; 24.113.3.4.8.10; 114.4.10.13.115.6; 20.1.16.7.7; 13.107.6.6.108.16; 16.213.7; 91.21.92.7.120.10 quantifiable (1) 16.14 quantification (30) 19.2.12.6.12; 86.9.11.12.16.87.7; 11.12.16.93.13.22; 19.2.12.6.12; 95.1.105.20.24; 106.4.111.21; 126.18.13.15.24; 138.18.139.15.22; 143.15.140.6; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
preparing (6) 8.15.21.9.11; 12.14.23.14.24.21 22.05.21	proceeds (1) 213.13	practitioner (2) 119.11.120.7	RA (1) 31.13 range (2) 13.10.67.17 rate (90) 21.6.7.22.2.2.2.3; 20.11.15.16.25.2; 29.1.10.15.34.2; 41.23.24.67.14.15; 78.5.19.21.80.6.15; 12.22.8.16.8.9.7; 100.1.2.4.4.10.9.9; 19.10.18.18.22; 111.3.4.5.7.112.3; 24.113.3.4.8.10; 114.4.10.13.115.6; 20.1.16.7.7; 13.107.6.6.108.16; 16.213.7; 91.21.92.7.120.10 quantifiable (1) 16.14 quantification (30) 19.2.12.6.12; 86.9.11.12.16.87.7; 11.12.16.93.13.22; 19.2.12.6.12; 95.1.105.20.24; 106.4.111.21; 126.18.13.15.24; 138.18.139.15.22; 143.15.140.6; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
presentation (1) 103.10.138.14.16; 132.12.146.13.25.5; 147.5.14.12.150.5; 157.23	process (11) 45.14.62.18.77.8; 86.21.126.19; 120.20.141.15.5; 166.13.182.11.15; 183.3	practitioner (2) 119.11.120.7	RA (1) 31.13 range (2) 13.10.67.17 rate (90) 21.6.7.22.2.2.2.3; 20.11.15.16.25.2; 29.1.10.15.34.2; 41.23.24.67.14.15; 78.5.19.21.80.6.15; 12.22.8.16.8.9.7; 100.1.2.4.4.10.9.9; 19.10.18.18.22; 111.3.4.5.7.112.3; 24.113.3.4.8.10; 114.4.10.13.115.6; 20.1.16.7.7; 13.107.6.6.108.16; 16.213.7; 91.21.92.7.120.10 quantifiable (1) 16.14 quantification (30) 19.2.12.6.12; 86.9.11.12.16.87.7; 11.12.16.93.13.22; 19.2.12.6.12; 95.1.105.20.24; 106.4.111.21; 126.18.13.15.24; 138.18.139.15.22; 143.15.140.6; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
presentational (1) 143.23	product (3) 89.49.181.9 product (3) 174.20	practitioner (2) 119.11.120.7	RA (1) 31.13 range (2) 13.10.67.17 rate (90) 21.6.7.22.2.2.2.3; 20.11.15.16.25.2; 29.1.10.15.34.2; 41.23.24.67.14.15; 78.5.19.21.80.6.15; 12.22.8.16.8.9.7; 100.1.2.4.4.10.9.9; 19.10.18.18.22; 111.3.4.5.7.112.3; 24.113.3.4.8.10; 114.4.10.13.115.6; 20.1.16.7.7; 13.107.6.6.108.16; 16.213.7; 91.21.92.7.120.10 quantifiable (1) 16.14 quantification (30) 19.2.12.6.12; 86.9.11.12.16.87.7; 11.12.16.93.13.22; 19.2.12.6.12; 95.1.105.20.24; 106.4.111.21; 126.18.13.15.24; 138.18.139.15.22; 143.15.140.6; 145.3.18.146.25; 177.15.22.200.8 147.6.149.3.170.15; 189.21.191.3.16.12; 20.19.32.14.14.24; 19.50.20.51.10.25; 54.9.58.12.59.1; 60.15.99.17.48.8.7; 11.75.6.76.3.77.16; 89.15.95.12.113.22; 23.114.22.116.19; 47.17.125.11; 127.2.5.7.135.14; 154.21.167.16; 172.5.198.15.17; 20.12.20.51.21; 21.12.20.51.21; 21.13
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